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RECENT LEGISLATION

JOSEPH J. LIPTON*

This survey of statewide acts passed during the 1964 session of the South Carolina General Assembly is in conformity with continuing efforts to assist judges and lawyers to keep abreast of statutory changes in the law. The purpose of this article will be to set forth in limited detail a summary of those acts which in the author's opinion appear to be of greatest significance to the members of the legal profession.

Additional acts will be listed by title only, thus enabling a practicing attorney to determine if the statute is of further interest to his situation.

Magistrates—Civil and Criminal Jurisdiction

The General Assembly amended a number of code sections which resulted in an increase in the civil and criminal jurisdiction of magistrates.

Section 43-51 of the South Carolina Code, 1962, is amended so as to increase the civil jurisdiction of magistrates from 100 to 200 dollars in actions arising on contracts for the recovery of money, for injuries to person or property, for claims or forfeitures, for attachment of property, for bonds conditioned upon payment of money, for surety bond, on confession of judgment, for damages arising out of fraud in the sale, purchase or exchange of personal property and for the recovery of possession of personal property.¹

Sections 45-4,² 16-357,³ 16-362,⁴ 16-355,⁵ 16-368,⁶ 16-381 and 16-382,⁷ 16-353,⁸ and 45-157⁹ have been amended so as to increase the jurisdictional amount from 20 to 50 dollars thereby enabling magistrates to entertain jurisdiction in actions involving property sold while under a mortgage or lien, for larceny of bicycles,

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1. S.C. Acts & J. RES. 1964, No. 926.
2. S.C. Acts & J. RES 1964, No. 687.
3. S.C. Acts & J. RES. 1964, No. 688.
4. S.C. Acts & J. RES. 1964, No. 689.
5. S.C. Acts & J. RES. 1964, No. 690.
6. S.C. Acts & J. RES. 1964, No. 691.
7. S.C. Acts & J. RES. 1964, No. 692.
8. S.C. Acts & J. RES. 1964, No. 693.
9. S.C. Acts & J. RES. 1964, No. 694.

for receiving stolen goods, for larceny of livestock and certain other personal property, for obtaining property by false pretense, for wilful injury to animals, and for wilful injury of real property.

Adoption of Persons

The general assembly recognized the necessity for more comprehensive legislation in the sensitive and responsible area involving adoption of persons—particularly minors in response to this need, the legislature repealed the existing statute in its entirety and passed an act which provides much greater administrative and judicial supervision over adoptions.¹⁰ The new act is designed to secure to the principals an additional measure of safety, security and peace of mind. The act requires the court to order a thorough investigation into the matter, including the suitability of the child for adoption, and the capability and suitability of those desiring to adopt, to care for and to rear the child.

Not only is the child's welfare protected, but all the essential facts concerning the child's health and background are made available to the prospective adopting parents. The investigation is conducted by the Children's Bureau of the State of South Carolina, by a private or public welfare organization, or by a representative of the court. However, upon "good cause" the court may dispense with the investigation. Further evidence of the legislative purpose toward greater supervision over adoption proceedings is to be found in section 11 of the act wherein the court, after a hearing, may issue an interlocutory decree marking the commencement of a trial period during which the child resides in the home of the petitioner. After six months from the date of the decree and a favorable report by the investigator the petitioners may apply to the court for a final decree of adoption.

The section relating to persons eligible to adopt minor children has been reduced to specific enumeration rather than continuing to adhere to the nebulous phrasing of "any person or persons . . ." contained in section 10-2581 of the 1962 Code. Correspondingly, any minor person present within this state at the time the petition for adoption is filed may be adopted. The act also omits the restriction of section 10-2585 of the 1962 Code prohibiting the adoption of an illegitimate child by any person

10. S.C. Acts & J. Res. 1964, No. 703.

unless its parents, if both were unmarried at the time of its birth, could have lawfully contracted matrimony under the constitution and laws of South Carolina. The act further provides that an adult person may be adopted by another adult person upon the consent of the adoptee. The provisions relating to investigation are made inapplicable in such instances.

The commencement of the suit for adoption has not been materially altered or modified. The act requires that the child be present within the state at the time the petition for adoption is filed. A petition is required to be served upon the child and a guardian ad litem prior to a hearing in the matter. The service of the summons may be personal or by publication. However, a noticeable departure from the former statute will be observed in section 6 of the act, requiring written consent to the adoption of the child by the natural parents, unless parental rights have been judicially terminated, or the person having custody of the child. In the event the child under consideration for adoption is illegitimate, the consent of the mother alone is required. The requisite consent prescribed under the act may be withdrawn only by permission of the court after a determination that the best interests of the child will be secured by the revocation.

From the final decree, the child adopted is deemed, for the purpose of inheritance, the natural child of the adopting parents as if born to them in lawful wedlock. Rights of inheritance shall be by and from such child.

Damage to Television Facilities

Under this act the wilful or malicious destruction or interference with telecasting facilities shall be deemed a misdemeanor. The punishment shall not exceed one thousand dollars or imprisonment for not more than one year or both.¹¹

Motor Vehicles Obtained by Fraud

This act, evidently designed to discourage the flagrant abuse which rent-a-car services are experiencing, offers some criminal recourse to such dealers. Henceforth, it shall be unlawful to obtain a motor vehicle with intent to defraud the owner or his agent. The principal elements to be demonstrated in pursuit of the action are: an agreement in writing to pay a rental, a time and place for return of the vehicle, and evidence that the vehicle

11. S.C. Acts & J. Res. 1964, No. 708.

has not been returned within seventy-two hours of the agreed time. Violation of the act constitutes a misdemeanor.¹²

Search Warrants for Narcotics

This act empowers a magistrate or a judge of any court of record, within his jurisdiction, to issue a search warrant authorizing the search and seizure of such narcotic drugs as are obtainable by prescription only.¹³

False Statement Concerning Building and Loan or Savings and Loan Associations

A new section was added to the Code making it a misdemeanor to wilfully utter false statements that impair or damage the solvency or credit reputation of any building and loan or savings and loan association in the financial community.¹⁴

Lewd Acts Upon Minors

Section 16-413.1 of the 1962 Code was so amended that a person over the age of fourteen years, instead of "any adult" as formerly stated, who commits lewd acts upon a child under fourteen years of age shall be punished by fine or imprisonment or both in the discretion of the court.¹⁵

Sale of Beer or Wine to Minors

The general assembly gave further consideration to laws affecting minors. The enacted legislation on the one hand provides that it shall be unlawful for any person under eighteen years of age to falsely state his age for the purpose of purchasing beer or wine. On the other hand, the act forbids any person to purchase such beverage on licensed premises to give to a minor.¹⁶

Unlawful to Issue Fraudulent Checks to Hostelery

Section 8-176 of the 1962 Code is amended so that fraudulent intent is attached to a check or other negotiable instrument regardless of the time when issued (prior to or upon departure

12. S.C. Acts & J. RES. 1964, No. 797.

13. S.C. Acts & J. RES. 1964, No. 763.

14. S.C. Acts & J. RES. 1964, No. 800.

15. S.C. Acts & J. RES. 1964, No. 948.

16. S.C. Acts & J. RES. 1964, No. 862.

or check out), when such instrument is rendered in payment of lodging, meals or other services obtained from a hostelry.¹⁷

Punitive Damages Recoverable Under a Motor Vehicle Liability Insurance Policy

A recent decision, *Laird v. Nationwide Ins. Co.*,¹⁸ of the South Carolina Supreme Court initiated legislation to clarify the term "damages" as used in those code sections dealing with motor vehicle liability insurance policies. The general assembly added a new item to section 46-750.11 of the Code which defines the term "damages" to include both punitive and actual damages.¹⁹

Cancellation of Motor Vehicle Liability Insurance Policy

The cancellation of automobile liability insurance policies received study and attention by the Legislature. Cancellation by an insurance company insuring a private passenger automobile is prohibited after the policy has been in effect for sixty days except for certain specific reasons enumerated in the act.²⁰ Section 46-138 of the 1962 Code was amended so as to permit notice of cancellation of an automobile liability insurance policy to be perfected by regular mail when evidenced by a post office receipt.²¹

The Good Samaritan Law

The general assembly at this session enacted what is commonly referred to as the Good Samaritan Law. The act relieves any person who voluntarily and gratuitously renders emergency care at the scene of an accident from an action for civil damages. Heretofore, once a course of assistance was entered upon, a duty was placed upon the volunteer to use reasonable care. A showing of the absence of such care left the samaritan subject to suit. The statute should encourage, and if not reward, at least relieve the samaritan from the threat of a law suit for any well intentioned act or omission not amounting to gross negligence or wilful or wanton misconduct.²²

17. S.C. Acts & J. Res. 1964, No. 1056.

18. 243 S.C. 388, 134 S.E.2d 206 (1964).

19. S.C. Acts & J. Res. 1964, No. 848.

20. S.C. Acts & J. Res. 1964, No. 766.

21. S.C. Acts & J. Res. 1964, No. 956.

22. S.C. Acts & J. Res. 1964, No. 923.

Death and Intestacy Presumed After Long Absence

A new item was added to section 19-52 of the 1962 Code providing that a person unmarried at the time of his disappearance or after a long unexplained absence shall, in addition to the presumption of death, be presumed to have died intestate, unmarried and without issue.²³

Garnishment of Wages for County Paid Medical Care

The general assembly at this session enacted a garnishment law which is not only highly restricted in application but is also limited in statewide effect. The usefulness of the act, after close study, will reveal that it is limited to Charleston County. The purpose of this legislation is to provide a method whereby a county may recover county-paid medical care, exclusive of doctors' fees, from those persons who are in fact able to pay for such need.²⁴

Instruments Payable to Bearer

The provisions of item 3 of section 8-820 of the 1962 Code were broadened and provide that an instrument is payable to the bearer when the payee is not only fictitious or non-existing but a "living person not intended to have any interest in it" and such fact is known to the person making it so payable, or to his agent who supplies the name of such payee.²⁵

ADDITIONAL STATEWIDE ACTS

The following acts of statewide effect are listed by title only:

An Act To Amend Section 8-223 Of The 1962 Code, Relating To Personal Or Installment Loans, So As To Modify A Reference To National Bank Loans.²⁶

An Act To Amend Section 10-2403 Of The 1962 Code, Relating To The Publication Of Summons And Service Upon Nonresidents For Recovery Of Real Property, So As To Eliminate Duplicate Service Of Process.²⁷

An Act To Amend Sections 15-1117 And 15-1121, Of The 1962 Code, Relating To Qualifications Of Judges And Associate

23. S.C. ACTS & J. RES. 1964, No. 938.

24. S.C. ACTS & J. RES. 1964, No. 950.

25. S.C. ACTS & J. RES. 1964, No. 947.

26. S.C. ACTS & J. RES. 1964, No. 954.

27. S.C. ACTS & J. RES. 1964, No. 1048.

Judges Of Certain Domestic Relations Courts, So As To Decrease The Number Of Years Of Residency And Practice Required Before Appointment; To Amend Section 15-1134, Of The 1962 Code, Relating To Receipts And Disbursements By The Clerk Of Certain Domestic Relations Courts, So As To Permit Destruction Of Certain Records; To Amend Section 15-1152, Of The 1962 Code, Relating To Terms, Hours And Certain Duties Of The Judge, So As To Delete The Requirement Of Visitations; To Amend Section 15-1275, Of The 1962 Code, Relating To Appeals From Domestic Relations Courts, So As To Further Provide For Sureties; And To Provide Fees And Costs In Domestic Relations Courts.²⁸

An Act To Specify The Procedure For Effecting An Adverse Claim Upon A Bank Deposit When Such Claim Is Not Based Upon A Fiduciary Relationship Nor Upon An Order Or Judgment Of A Court Of Competent Jurisdiction.²⁹

Taxation

An Act Adding Section 65-251.1 To The 1962 Code, Relating To Income Taxes, So As To Provide For Certain Items Of Gross Income In Respect Of A Decedent To Be Included In Gross Income For The Taxable Year When Received And To Provide For Allowances For Estate Tax Purposes; And To Amend Section 65-271 Of The 1962 Code, As Amended, Relating To The Determination Of Gain Or Loss For Income Tax Purposes, So As To Exclude Certain Property From The Provisions Of This Section.³⁰

An Act Adding Section 65-273.2 To The 1962 Code, Relating To Income Taxes, So As To Provide For The Restriction Of Losses With Respect To Transactions Between Related Taxpayers.³¹

An Act To Amend Section 65-281 Of The 1962 Code, Relating To Accounting Methods For Income Tax Purposes, So As To Take Into Account Certain Adjustments When Taxpayer's Accounting Basis Is Changed From A Cash To An Accrual Basis.³²

An Act To Provide For Treatment As Capital Gains Of Certain Distributions From Regulated Investment Companies.³³

28. S.C. ACTS & J. RES. 1964, No. 1057.

29. S.C. ACTS & J. RES. 1964, No. 1067.

30. S.C. ACTS & J. RES. 1964, No. 941.

31. S.C. ACTS & J. RES. 1964, No. 942.

32. S.C. ACTS & J. RES. 1964, No. 943.

33. S.C. ACTS & J. RES. 1964, No. 944.

An Act To Amend Section 65-259 Of The 1962 Code, Relating To The Taxation Of Income So As To Allow Corporations In Computing Net Income To Deduct Contributions To Trusts Or Foundations Organized For Religious, Charitable, Scientific, Literary Or Educational Purposes.³⁴

An Act To Amend Item (6) Of Section 65-259 Of The 1962 Code, Relating To Income Tax Deductions, So As To Restrict The Deduction For Casualty Losses To Property Having An Actual Situs In This State And To Amend Section 65-202 Of The 1962 Code, Relating To Definitions For Income Tax Purposes, So As To Add A Definition.³⁵

An Act To Provide For The Filing Of Certain Property Tax Returns On The Basis Of The Taxpayer's Accounting Period For Income Taxation; To Amend Sections 65-1647, 65-1648, 65-1663 And 65-1664 Of The 1962 Code, Relating To Property Taxation, So As To Require A Manufacturer To Return For Taxation Manufactured Articles Offered Or Available For Sale At Retail; To Provide For The Valuing Of Real And Personal Property For Property Taxation Purposes; To Classify Pawnbrokers As Merchants For Tax Purposes; And To Repeal Sections 65-1628, 65-1629 And 65-1630 Of The 1962 Code, Relating To Property Taxation, So As To Exempt Persons Beginning Business After The First Day Of January From Filing A Pro Rata Return For County Taxation.³⁶

An Act To Amend Sections 65-320 And 65-362 Of The 1962 Code, Relating To Underestimating Income Tax And Penalties For Failure To Pay Tax, So As To Reduce The Estimate Of The Actual Tax Due And To Reduce The Penalty And Interest For Failure To Pay Any Tax Due.³⁷

An Act Adding Sections 65-9, 65-266, And 65-398.1 To The 1962 Code, So As To Eliminate The Necessity Of Notarizing Certain Returns Or Reports Filed With The South Carolina Tax Commission, To Provide For Disallowance Of Double Deductions As Pertains To Estate Taxes And Income Taxes, And To Provide Penalties For Divulging Information In Connection With The South Carolina Withholding Tax; To Amend Sections 65-225, 65-258, 65-279.9, 65-286, 65-294 And 65-311 Of The 1962 Code, All Of Which Relate To Taxation, So As To Allow The

34. S.C. Acts & J. RES. 1964, No. 949.

35. S.C. Acts & J. RES. 1964, No. 1002.

36. S.C. Acts & J. RES. 1964, No. 1053.

37. S.C. Acts & J. RES. 1964, No. 1053.

Option Of Filing A Joint Return After An Original Return Has Been Filed, To Provide For Adjusted Gross Income For Fiduciaries, To Correct A Typographical Error, To Provide That The Taxpayer's Option For Reporting Income On An Installment Basis Must Be Filed On The Timely Filed Returns, To Provide For The Execution Of Corporate Returns, And To Eliminate Fiduciaries From Filing Declarations And From The Payment Of Estimated Taxes; To Amend Sections 65-223, 65-223.1, 65-259, 65-275, 65-341, 65-453, 65-455, 65-465, 65-481, 65-547 And 65-1404 Of The 1962 Code, As Amended, All Of Which Relate To Taxation, So As To Provide For The Taxation Of Income Of Estates Or Trusts Which Has Not Become Distributable, To Adopt Amendments And Applicable Regulations As Of December 31, 1962, Relating To Federal Internal Revenue Code Sections Adopted By Reference In Certain Code Sections, To Provide For A Minimum Tax With Respect To Corporations Electing To Make Payment Of Their Taxes In Installments, And To Provide That A Certain Affidavit Be Filed With The Sales Tax Return And That The Penalty For A Falsified Affidavit Be Assessed Against The Purchaser Or The Seller; To Amend Section 14.1 Of Act No. 847 Of 1962, Relating To Reports To Be Filed By Business Corporations, So As To Provide For The Elimination Of Duplicate Reporting Of Certain Information; To Amend Act No. 822 Of 1962, Relating To The Payment Of Interest On Taxes, So As To Provide That Interest Be Paid With Respect To All Items Of Taxes, License Fees, Penalties And Interest Recovered Through Litigation; To Amend Act No. 197 Of 1963, Which Authorizes Payment Of Certain Income Tax Refunds To A Surviving Spouse, So As To Further Provide Therefor; And To Amend Section 65-565 Of The 1962 Code, Relating To Transfers Of Assets Of Estates, So As To Permit Withdrawals By The Spouse Of A Deceased Joint Depositor.³⁸

Election Laws

An Act To Provide For The Mandatory Recount Of Votes In Certain Elections.³⁹

An Act To Amend Section 23-264, Code Of Laws Of South Carolina, 1962, Providing For The Nomination Of Party Candidates By Convention, So As To Alter The Time For Making

38. S.C. ACTS & J. RES. 1964. No. 1074.

39. S.C. ACTS & J. RES. 1964, No. 711.

Such Nominations And To Amend Section 23-313, Code Of Laws Of South Carolina, 1962, Providing For The Nomination Of Candidates By Petition, So As To Alter The Time When Such Petitions May Be Presented.⁴⁰

An Act To Amend Section 23-373 Of The 1962 Code, Relating To Notice Of Candidacy And Pledge Of Candidates For Nomination By A Political Party, So As To Prevent The Candidacy Of Unsuccessful Candidates In The General Election For Which Nomination Was Sought.⁴¹

An Act To Amend Section 23-379, Code Of Laws Of South Carolina, 1962, Setting Forth The Additional Oath And Pledge Required Of Every Voter, So As To Provide The addition Thereto That The Voter Has Not Participated In Any Other Party's Primary Election, Convention, Or Precinct Meeting During The Year, And To Delete From The Oath And Pledge That Portion Requiring The Support Of The Nominees Of The Primary In The General Election To Follow.⁴²

An Act To Amend Sections 23-254, 23-259, 23-260 And 23-262 Of The 1962 Code, Relating To Political Parties, So As To Provide That If The Last Preceding Nomination Of A Political Party Has Been By Convention The Representation At The County Convention Shall Be Based Upon The Vote In The Precinct For Presidential Electors In The Last Preceding General Election And To Provide For The Reporting Of Precinct, County And State Political Party Officers.⁴³

An Act To Provide For The Nomination Of Candidates For Offices Of Municipalities; To Make The Provisions Cumulative; And To Amend Section 47-217 Of The 1962 Code, Relating To Appeals To The Courts On Decisions Of The Council Of A Municipality Of Over One Thousand Inhabitants, So As To Provide That Appeals May Be Made Within Ten Days After Notice Of The Decision Of The Council.⁴⁴

40. S.C. Acts & J. Res. 1964, No. 712.

41. S.C. Acts & J. Res. 1964, No. 722.

42. S.C. Acts & J. Res. 1964, No. 753.

43. S.C. Acts & J. Res. 1964, No. 772.

44. S.C. Acts & J. Res. 1964, No. 922.